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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,926	03/10/2004	Frederick Murray Burg	2000-0314 CON	3256

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
2609	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/796,926	BURG ET AL.	
	Examiner	Art Unit	
	Khai N. Nguyen	2609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Title

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Method to manage incoming calls on the queue.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a

nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,738,473. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim 1 of the instant application is broader in scope than the claim 1 of the patent 6,738, 473 (claims 2-26 of the instant application are exactly identical "word for word" with the claims 2-26 of the patent '473). Omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before. In re KARLSON (CCPA) 136 USPQQ 184 (1963).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-15 and 18-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (U.S. Pub. 2003/0035531 A1).

Regarding claim 1, Brown et al. teach a method for managing calls comprising the steps of:

receiving a call (see Fig. 3a – 300, paragraph [0030], lines 7-8);

queuing the call on a queue (Fig. 3a – 302 and 304, paragraph [0030], lines 9-13);

suspending the call at a predetermined position on the queue in response to caller input (Fig. 3a – 306 and 308, paragraph [0030], lines 13-18, paragraph [0015]); and

sequencing the queue while maintaining the position of the call at the predetermined position on the queue (Fig. 3a – 310).

Regarding claims 2 and 3, Brown et al. disclose the predetermined position is a current position (paragraph [0030], lines 16-17; paragraph [0015]); and the predetermined position is a top position (Fig. 3a and Fig. 3b, paragraph [0030], lines 32-36; paragraph [0015]).

Regarding claims 4 and 5, Brown et al. also teach providing an estimated wait time, said estimated wait time being an estimate of the wait time until the call is answered (paragraph [0030], lines 26-27); and wherein providing the estimated wait time is based on caller input (paragraph [0030], lines 21-24).

Regarding claims 6 and 7, Brown et al. teach a method of providing queue length information, the queue length being the number of calls in the queue ahead of said call (paragraph [0030], lines 24-28); and wherein providing the queue length information is based on caller input (paragraph [0030], lines 24-28).

Regarding claims 8,9 and 10, Brown et al. teach a method of providing a selection of communication mechanisms (page 4 - paragraph [0034], lines 13-15); and wherein the communication mechanism is selected from the group consisting of voice-mail, e-mail, page and fax (page 4 - paragraph [0034], lines 16-21); and one of recording voice-mail, receiving e-mail, receiving a page or receiving a fax in response to a request for a change in the communication mechanism (Fig. 5, paragraph [0035]).

Regarding claims 11 and 12, Brown et al. teach a method changing wait time (paragraph [0030], lines 24-29), and wherein changing wait time is based on caller input (paragraph [0030], lines 24-29, paragraph [0015]).

Regarding claims 13, 14 and 15, Brown et al. teach a method of setting a wait time limit, said wait time limit being a maximum desired wait time (paragraph [0030], lines 18-24); and wherein setting the wait time limit is based on caller input (paragraph [0030], lines 18-24); further transmitting a query to the caller if the call is not answered within the wait time limit (paragraph [0030], lines 40-42).

Regarding claims 18 and 19, Brown et al. teach a method of suspending is maintained for a predetermined period of time (Fig. 3a – 306 and 308, paragraph [0015], lines 3-5); and wherein the predetermined period of time is based on caller input (paragraph [0015], lines 5-7).

Regarding claims 20, 21 and 22, Brown et al. teach a method of advancing the call in the queue after suspending and sequencing steps, and advancing is based on caller input, and the advancing of the call in the queue starts at the predetermined position (paragraph [0030], lines 24-29).

Regarding claims 23, 24 and 25, Brown et al. teach the call is placed via a computer, and the call is Voice-over-IP (VoIP), and the call is a telephone call placed via a Public Switched Telephone Network (PSTN) (paragraph [0018], lines 1-9).

Regarding claim 26, Brown et al. teach a method of wherein suspending the call allows a predetermined number of calls to bypass the call (paragraph [0034] and paragraph [0035]).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (U.S. Pub. 2003/0035531 A1) in view of Johnson et al. (U.S. Pub. 2002/0196927 A1).

Claim 16. The method of claim 1 further comprising receiving callback information from the caller.

Claim 17. The method of claim 16 wherein the callback information comprises one of a phone number or available times to call.

Regarding claims 16 and 17, Brown et al. disclose everything claimed as applied above (see claim 1). However, Brown et al. fail to specifically disclose their invention is readily to provide the callback feature using caller's information.

In the same field of endeavor, Johnson et al. disclose a method and apparatus for controlling administration of queues by a caller, and of communication data to an agent (see [paragraph 0008]). The advantage of Johnson's invention is the agent will be used the callback information entered by the caller, and this private information (i.e. phone number) will be secured (see paragraph [0026]). Additionally, the caller can request a particular agent and will be notified with the callback procedure (see paragraph [0041]).

Therefore, it would have been obvious to person of ordinary skill in the art at the time the invention was made to provide Brown et al. with the callback procedure to implement the method of receiving callback information from the caller and wherein the call back information comprises one of a phone number or available time to call.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Nabkel et al. (U.S. Patent 6,141,328) teach system and method for negotiating call holding between calling party and called party.

Philonenko (U.S. Pub. 2002/0131399 A1) teaches method of assigning priority to calls based on user input.

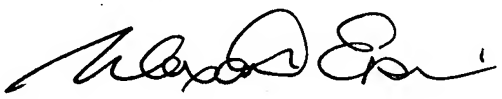
Goss et al. (U.S. Patent 6,493,447) teach a system and method for callback requests to a call center via Internet.

Morganstein et al. (Re. 37,001) teach apparatus for queuing callers waiting to be connected to agents.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khai N. Nguyen whose telephone number is (571) 270-3141. The examiner can normally be reached on Monday - Thursday 6:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Eisen can be reached on (571) 272-7687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Art Unit 2609

KNN
5/16/2007